IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 290 of 2007()

CRIME NO.146/06 OF THE ELATHUR POLICE STATION.

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PETITIONER:

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1. K. PRATHEEKSH, S/O.K.RAMAN,
   KAYYAUNNIMMAL HOUSE, KAKKODI P.O.,
   CALICUT.

2. E.P. DINESHAN, S/O.PERAVAKKUTTY,
   KULANGARAVAYAL HOUSE, KAKKODI AMSOM,
   KOZHIKODE DISTRICT.

3. E.P. ANIL DAS, S/O.PERAVAKKUTTY,
   KULANGARAVAYAL HOUSE, KAKKODI AMSOM,
   KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
ELATHUR POLICE STATION, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 290 OF 2007

Dated this the 7th day of February, 2007

ORDER

The petitioners face indictment in a prosecution for the offences punishable, inter alia, under Sec.3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Investigation is in progress. According to the petitioners, the allegations raised against them are totally false and are made with a transparent intention of vexation. The petitioners cannot seek anticipatory bail in the light of the specific bar under Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Though going by the schedule to the Cr.P.C., the offences are triable by a Magistrate. The trial will have to be held before a Court of Session in the light of the stipulations in Sec.14 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The petitioners are willing to surrender before the learned Magistrate. But they apprehend that as the offences alleged include an offence triable exclusively by a Court of Session, the learned Magistrate may entertain an impression

that he is not legally competent to grant bail and may detain the petitioners in custody. It is, in these circumstances, that the petitioners have come to this Court with a prayer that directions under Sec.482 of the Cr.P.C. may be issued to the learned Magistrate to release them on bail when they surrender before the learned Magistrate and apply for bail.

2. It is not the law that merely because the offence is triable by a Court of Session, the Magistrate is legally not competent to consider the bail application. If there be any doubts on this aspect, I must assume that they have been set to rest by the repeated decisions of this Court in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1) K.L.D. (Cri) 250).

3. Still, the petitioners apprehend that the learned Magistrate may not consider their bail application on merits and pray for directions.

4. I find no merit in the said prayer. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and

expeditiously. The learned Magistrate is bound to take note of the four decisions referred above. No special or specific directions appear to be necessary.

5. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously – on the date of surrender itself, and taking note of the above decisions.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge